

STATE OF MINNESOTA
IN COURT OF APPEALS

A22-0032



Adam C. Steele, petitioner,

Appellant,

vs.

Sarah M. Held,

Respondent.

ORDER OPINION

Houston County District Court
File No. 28-FA-12-565

Considered and decided by Gaïtas, Presiding Judge; Worke, Judge; and Jesson, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant-father Adam C. Steele and respondent-mother Sarah M. Held are the parents of a teenaged child born in 2007. Father challenges five district court orders: two orders denying father's requests for discovery sanctions, an order granting mother's request for an evidentiary hearing in connection with her motion to modify custody, an order denying father's motion to modify custody and granting mother's motion to modify custody, and an order establishing parenting time. Mother has not filed a response in this appeal.¹ Because the district court did not abuse its discretion in modifying custody and

¹ The matter proceeded pursuant to Minn. R. Civ. App. P. 142.03, providing that if respondent does not file a brief, the case shall be determined on the merits.

parenting time, and father's allegations of error either lack merit or were insufficiently briefed, we affirm the district court's orders.

2. In 2013, the district court filed an order granting father sole legal custody and granting father and mother joint physical custody of the child.

3. Father filed a motion to modify custody in 2018. The district court denied the motion without granting father an evidentiary hearing. Father appealed.

4. We reversed and remanded for an evidentiary hearing on father's motion to modify custody, concluding that "the district court did not properly consider the allegations in appellant's affidavit and abused its discretion by determining that appellant failed to make a prima facie case for modification." *Steele v. Held*, No. A18-1912, 2019 WL 4164894, at *1 (Minn. App. Sept. 3, 2019).

5. Following the remand, father filed approximately 13 continuance requests and 71 motions. The evidentiary hearing was ultimately scheduled for November 2021.

6. Before the evidentiary hearing, the district court appointed a guardian ad litem (GAL) to make recommendations for custody and parenting time that would serve the child's best interests, and to make recommendations about mental health services for the child, mother, and father.

7. The GAL filed a report in February 2021 that recommended granting mother temporary legal custody, while retaining parents' joint physical custody of the child and the existing "week on/week off" parenting time schedule. Additionally, the report recommended that mother and father undergo psychological evaluations. The report noted concern that father engages in "gatekeeping behavior" with the child, encourages the

child's negative feelings toward mother, inappropriately involves the child in parental conflict and the legal proceedings, and advocates for the child to "choose" where he lives and how much time he spends with each parent.

8. After the GAL issued the report, father shared the contents of the report with the child. This caused the child to experience a mental health crisis, which resulted in hospitalization.

9. The GAL moved the district court to grant mother sole legal custody and temporary sole physical custody of the child, and to limit father's parenting time to supervised visits. Based on concern for the child's well-being, the district court granted the GAL's motion.

10. Father objected to the GAL's report, and the district court scheduled an evidentiary hearing. Before the hearing, father served discovery requests on the GAL. The GAL, who was represented by counsel, objected to the requests as improper under the rules governing guardians ad litem. *See* Minn. R. Gen. Prac. 905. Father filed a motion to compel the GAL to respond to his discovery requests, and "[g]iven the tenor of this case," the district court ordered the GAL to respond to father's discovery requests in writing. The GAL responded in writing, objecting to each of father's interrogatories and denying father's requests for admissions.

11. Father then filed two motions seeking sanctions against the GAL—one citing rule 11 and the other citing rule 37 of the Minnesota Rules of Civil Procedure. Both motions alleged that the GAL's conduct in responding to father's discovery requests had

delayed the proceedings. The district court denied these motions in two separate orders filed the same day.

12. In August 2021, while father's original motion to modify custody was still pending, mother filed her own motion to modify custody and parenting time. The district court granted mother's request for an evidentiary hearing and scheduled one evidentiary hearing to address both father's and mother's motions to modify custody, which was to commence on November 15, 2021.

13. Father and mother represented themselves at the evidentiary hearing. The GAL was represented by counsel.

14. On the first day of the hearing, father asked the district court to "send us all home this morning" because he was unprepared and wished to withdraw his custody-modification motion. Father withdrew his motion to modify custody on the record. Before the district court proceeded with mother's motion to modify custody and parenting time, and with the district court's approval, father provided a settlement proposal to mother and the GAL. Neither mother nor the GAL accepted the proposal.

15. After father withdrew his motion, the focus of the evidentiary hearing was mother's motion to modify custody and parenting time. Father participated in the hearing by cross-examining mother, responding to objections, and communicating his position to the district court. The district court noted that father was unprepared, however, which significantly slowed the proceeding.

16. On the second and final day of the hearing, father failed to appear in court. However, he filed two motions that morning. One motion sought a continuance of the

evidentiary hearing, alleging that father was seeking medical attention due to anxiety caused by the proceedings. The second motion requested various forms of relief, including “granting sole physical and legal custody to” father. The district court continued with the hearing in father’s absence.

17. Subsequently, the district court filed a written order² granting mother permanent sole physical and permanent sole legal custody of the child, and both dismissing and denying father’s motion for modification of custody. The district court dismissed father’s custody-modification motion based on father’s request to withdraw the motion and father’s failure to pursue the motion. Alternatively, the district court denied father’s motion as an involuntary dismissal under Minnesota Rule of Civil Procedure 41.02(a),³ noting that father abandoned his motion, appeared unprepared to proceed, failed to comply with the court’s orders, and testified that his motion was not in the best interests of the child. The district court determined that modifying custody to grant mother both sole legal custody and sole physical custody of the child was appropriate because there had been a change in circumstances, modification would serve the child’s best interests, father had endangered the child’s emotional health and development, and the advantages of modification outweighed any potential harm to the child. *See In re Weber*, 653 N.W.2d 804, 809-12

² The district court filed an order on November 22, 2021, and an amended order on December 7, 2021. It appears that the only change to the second order is a modification of the child’s initials.

³ “The court may upon its own initiative, or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court.” Minn. R. Civ. P. 41.02(a).

(Minn. App. 2002) (describing the factors that must be met to find a change in legal and physical custody).

18. The district court's custody order also addressed father's conduct in the proceedings:

Father's statements to this Court attempting to justify his lack of preparedness cause this Court great concern and this Court finds Father to lack credibility. This Court finds that Father has intentionally delayed the proceedings. This Court finds that Father, while he may have stress due to these proceedings, much of the stress can be attributed to his own failure to comply with the clear directives of this Court, his own failure to comply with discovery, his own failure to prepare for the evidentiary hearing and, most importantly, his own failure to focus on the needs and the best interests of the parties' minor child.

19. In a separate parenting time order, the district court performed a thorough analysis of the child's best interests, considering each of the best-interests factors identified in Minnesota Statutes section 518.17, subdivision 1(a) (2020). Based on its assessment of the child's best interests, the district court granted mother parenting time and ordered limited supervised visits for father. The district court also ordered parents to work with a parenting time evaluator (PTE).

20. On appeal, father raises the following issues: (1) whether a GAL is required to respond to discovery requests; (2) whether a GAL can object to discovery requests and avoid responding to questions; (3) whether a GAL can rely on Minnesota Rule of General Practice 905.01(c) to limit discovery responses; (4) whether the district court can waive the requirements of rule 905.01(c) to allow responses to discovery; (5) whether the district court should have ordered in camera review of discovery responses; (6) whether the district

court found a change in circumstances sufficient to hold an evidentiary hearing for mother's motion to modify custody; (7) whether the district court's factual findings are supported by the record; (8) whether the benefits of a change in custody outweigh the detriments; and (9) whether the district court abused its discretion by: (a) issuing an ex parte temporary custody order; (b) maintaining a temporary parenting time order; (c) failing to order a custody study; (d) selectively enforcing Minnesota Rule of Civil Procedure 26; (e) inequitably excluding witnesses and exhibits; (f) denying father a continuance for medical necessity; (g) limiting father's cross-examination of mother; (h) failing to timely issue subpoenas and commissions for subpoenas; (i) failing to consider the reasonable preference of the child; (j) failing to apply the rebuttable presumption of 25% parenting time under Minnesota Statutes section 518.175, subdivision 1(g) (2020); (k) limiting father's ability to file new motions; (l) raising objections on mother's behalf; (m) adopting proposed findings verbatim; and (n) granting a default on the merits.

21. A district court has broad discretion regarding discovery, and absent an abuse of that discretion, its discovery decision will not be altered on appeal. *Kielley v. Kielley*, 674 N.W.2d 770, 780 (Minn. App. 2004). Father challenges the district court's rulings on his motions for discovery sanctions against the GAL. The district court's rulings were a proper exercise of its discretion. Moreover, the district court's rulings relate to discovery requested in connection with father's own custody-modification motion, which he ultimately withdrew. We therefore reject father's challenges to the district court's orders denying his motions for discovery sanctions.

22. A district court has broad discretion to determine the custody of the parties' children. *See Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019) (“[A] district court needs great leeway in making a custody decision that serves a child’s best interests, in light of each child’s unique family circumstance.”). Likewise, district courts have broad discretion in ruling on parenting time. *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010) (citing *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995)). A district court abuses its discretion if its findings of fact are unsupported by the record or if it improperly applies the law or if it resolves the question in a manner that is contrary to logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997); *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022); *see Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021) (making a similar statement). Based on our careful review of the district court’s orders and the record, we conclude that the district court did not abuse its discretion in granting mother sole legal custody and sole physical custody of the child and did not abuse its discretion in its parenting-time decision.⁴

23. We reject father’s arguments concerning his inability to respond to mother’s motions. The district court found that father deliberately delayed the proceedings, and the record supports that finding. Additionally, the record shows that father squandered his opportunities to respond to mother’s motions. Father had ample time to prepare for the evidentiary hearing, but he was unprepared on the first day of the hearing. The district

⁴ To the extent that father is challenging the district court’s decision to grant an evidentiary hearing on mother’s motion for modification of custody, we reject that argument given our determination that the district court did not abuse its discretion in its custody decision.

court accommodated father's lack of preparation by allowing him to cross-examine mother for several hours. Father then failed to appear for the second day of the hearing.

24. We also reject father's arguments concerning his motion for modification of custody because he withdrew the motion before the district court could consider it. We thus decline to address those issues on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts should generally only review questions that the district court heard and considered).

25. As to father's remaining issues, he either failed to cite to the record or failed to adequately brief each issue through argument or citations to legal authority. The record in this case consists of over 24 volumes of documents, totaling more than 3,700 pages; 6 volumes of transcripts, totaling approximately 1,000 pages; and 1 volume of exhibits, containing over 100 pages. Caselaw makes clear that citations to the record "are particularly important where . . . the record is extensive." *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996), *aff'd*, 568 N.W.2d 705 (Minn. 1997). Moreover, failure to cite to the record is a violation of Minnesota Rule of Civil Appellate Procedure 128.03, and "[a] flagrant violation of the rules to fail to provide citations to the record may lead to non-consideration of an issue or dismissal of an appeal." *Brett v. Watts*, 601 N.W.2d 199, 202 (Minn. App. 1999) (quotation omitted), *rev. denied* (Minn. Nov. 17, 1999). Father's failure to cite to the record here is flagrant. Additionally, father failed to make legal arguments or cite to authority to support his propositions. We therefore decline to address any remaining issues. *See Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue);

Brodsky v. Brodsky, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal).


IT IS HEREBY ORDERED:

1. The district court's orders, including the orders modifying custody and parenting time, are affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 11/14/2022

BY THE COURT



Judge Theodora Gaïtas